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## NOTICE OF ALLOWANCE AND FEE(S) DUE

21171 7590 12/22/2008

STAAS & HALSEY LLP  
SUITE 700  
1201 NEW YORK AVENUE, N.W.  
WASHINGTON, DC 20005

EXAMINER

STRIEB, MICHAEL A

ART UNIT

PAPER NUMBER

2862

DATE MAILED: 12/22/2008

| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|-----------------|-------------|----------------------|---------------------|------------------|
|-----------------|-------------|----------------------|---------------------|------------------|

10/550,489

09/26/2005

Satoshi Fukui

1466.1104

5404

TITLE OF INVENTION: PHOTOGRAPHING APPARATUS PHOTOGRAPHING METHOD AND COMPUTER PROGRAM

| APPLN. TYPE    | SMALL ENTITY | ISSUE FEE DUE | PUBLICATION FEE DUE | PREV. PAID ISSUE FEE | TOTAL FEE(S) DUE | DATE DUE   |
|----------------|--------------|---------------|---------------------|----------------------|------------------|------------|
| nonprovisional | NO           | \$1510        | \$300               | \$0                  | \$1810           | 03/23/2009 |

**THE APPLICATION IDENTIFIED ABOVE HAS BEEN EXAMINED AND IS ALLOWED FOR ISSUANCE AS A PATENT. PROSECUTION ON THE MERITS IS CLOSED. THIS NOTICE OF ALLOWANCE IS NOT A GRANT OF PATENT RIGHTS. THIS APPLICATION IS SUBJECT TO WITHDRAWAL FROM ISSUE AT THE INITIATIVE OF THE OFFICE OR UPON PETITION BY THE APPLICANT. SEE 37 CFR 1.313 AND MPEP 1308.**

**THE ISSUE FEE AND PUBLICATION FEE (IF REQUIRED) MUST BE PAID WITHIN THREE MONTHS FROM THE MAILING DATE OF THIS NOTICE OR THIS APPLICATION SHALL BE REGARDED AS ABANDONED. THIS STATUTORY PERIOD CANNOT BE EXTENDED. SEE 35 U.S.C. 151. THE ISSUE FEE DUE INDICATED ABOVE DOES NOT REFLECT A CREDIT FOR ANY PREVIOUSLY PAID ISSUE FEE IN THIS APPLICATION. IF AN ISSUE FEE HAS PREVIOUSLY BEEN PAID IN THIS APPLICATION (AS SHOWN ABOVE), THE RETURN OF PART B OF THIS FORM WILL BE CONSIDERED A REQUEST TO REAPPLY THE PREVIOUSLY PAID ISSUE FEE TOWARD THE ISSUE FEE NOW DUE.**

### HOW TO REPLY TO THIS NOTICE:

#### I. Review the SMALL ENTITY status shown above.

If the SMALL ENTITY is shown as YES, verify your current SMALL ENTITY status:

A. If the status is the same, pay the TOTAL FEE(S) DUE shown above.

B. If the status above is to be removed, check box 5b on Part B - Fee(s) Transmittal and pay the PUBLICATION FEE (if required) and twice the amount of the ISSUE FEE shown above, or

If the SMALL ENTITY is shown as NO:

A. Pay TOTAL FEE(S) DUE shown above, or

B. If applicant claimed SMALL ENTITY status before, or is now claiming SMALL ENTITY status, check box 5a on Part B - Fee(s) Transmittal and pay the PUBLICATION FEE (if required) and 1/2 the ISSUE FEE shown above.

II. PART B - FEE(S) TRANSMITTAL, or its equivalent, must be completed and returned to the United States Patent and Trademark Office (USPTO) with your ISSUE FEE and PUBLICATION FEE (if required). If you are charging the fee(s) to your deposit account, section "4b" of Part B - Fee(s) Transmittal should be completed and an extra copy of the form should be submitted. If an equivalent of Part B is filed, a request to reapply a previously paid issue fee must be clearly made, and delays in processing may occur due to the difficulty in recognizing the paper as an equivalent of Part B.

III. All communications regarding this application must give the application number. Please direct all communications prior to issuance to Mail Stop ISSUE FEE unless advised to the contrary.

**IMPORTANT REMINDER: Utility patents issuing on applications filed on or after Dec. 12, 1980 may require payment of maintenance fees. It is patentee's responsibility to ensure timely payment of maintenance fees when due.**

# **PART B - FEE(S) TRANSMITTAL**

**Complete and send this form, together with applicable fee(s), to: Mail Mail Stop ISSUE FEE  
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Alexandria, Virginia 22313-1450  
or Fax (571)-273-2885**

INSTRUCTIONS: This form should be used for transmitting the ISSUE FEE and PUBLICATION FEE (if required). Blocks 1 through 5 should be completed where appropriate. All further correspondence including the Patent, advance orders and notification of maintenance fees will be mailed to the current correspondence address as indicated unless corrected below or directed otherwise in Block 1, by (a) specifying a new correspondence address; and/or (b) indicating a separate "FEE ADDRESS" for maintenance fee notifications.

CURRENT CORRESPONDENCE ADDRESS (Note: Use Block 1 for any change of address)

Note: A certificate of mailing can only be used for domestic mailings of the Fee(s) Transmittal. This certificate cannot be used for any other accompanying papers. Each additional paper, such as an assignment or formal drawing, must have its own certificate of mailing or transmission.

21171 7590 12/22/2008

**STAAS & HALSEY LLP**  
SUITE 700  
1201 NEW YORK AVENUE, N.W.  
WASHINGTON, DC 20005

## **Certificate of Mailing or Transmission**

I hereby certify that this Fee(s) Transmittal is being deposited with the United States Postal Service with sufficient postage for first class mail in an envelope addressed to the Mail Stop ISSUE FEE address above, or being facsimile transmitted to the USPTO (571) 273-2885, on the date indicated below.

|                    |
|--------------------|
| (Depositor's name) |
| (Signature)        |
| (Date)             |

| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|-----------------|-------------|----------------------|---------------------|------------------|
| 10/550,489      | 09/26/2005  | Satoshi Fukui        | 1466.1104           | 5404             |

TITLE OF INVENTION: PHOTOGRAPHING APPARATUS PHOTOGRAPHING METHOD AND COMPUTER PROGRAM

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| EXAMINER          | ART UNIT | CLASS-SUBCLASS |
|-------------------|----------|----------------|
| STRIEB, MICHAEL A | 2862     | 396-067000     |

1. Change of correspondence address or indication of "Fee Address" (37 CFR 1.363).

- ☐ Change of correspondence address (or Change of Correspondence Address form PTO/SB/122) attached.
- ☐ "Fee Address" indication (or "Fee Address" Indication form PTO/SB/47; Rev 03-02 or more recent) attached. **Use of a Customer Number is required.**

2. For printing on the patent front page, list

- (1) the names of up to 3 registered patent attorneys or agents OR, alternatively, 1 \_\_\_\_\_
- (2) the name of a single firm (having as a member a registered attorney or agent) and the names of up to 2 registered patent attorneys or agents. If no name is listed, no name will be printed. 2 \_\_\_\_\_
- 3 \_\_\_\_\_

3. ASSIGNEE NAME AND RESIDENCE DATA TO BE PRINTED ON THE PATENT (print or type)

PLEASE NOTE: Unless an assignee is identified below, no assignee data will appear on the patent. If an assignee is identified below, the document has been filed for recordation as set forth in 37 CFR 3.11. Completion of this form is NOT a substitute for filing an assignment.

(A) NAME OF ASSIGNEE (B) RESIDENCE: (CITY and STATE OR COUNTRY)

Please check the appropriate assignee category or categories (will not be printed on the patent) : ☐ Individual ☐ Corporation or other private group entity ☐ Government

4a. The following fee(s) are submitted:

- ☐ Issue Fee
- ☐ Publication Fee (No small entity discount permitted)
- ☐ Advance Order - # of Copies \_\_\_\_\_

4b. Payment of Fee(s); (Please first reapply any previously paid issue fee shown above)

- ☐ A check is enclosed.
- ☐ Payment by credit card. Form PTO-2038 is attached.
- ☐ The Director is hereby authorized to charge the required fee(s), any deficiency, or credit any overpayment, to Deposit Account Number \_\_\_\_\_ (enclose an extra copy of this form).

5. Change in Entity Status (from status indicated above)

- ☐ a. Applicant claims SMALL ENTITY status. See 37 CFR 1.27. ☐ b. Applicant is no longer claiming SMALL ENTITY status. See 37 CFR 1.27(g)(2).

NOTE: The Issue Fee and Publication Fee (if required) will not be accepted from anyone other than the applicant; a registered attorney or agent; or the assignee or other party in interest as shown by the records of the United States Patent and Trademark Office.

Authorized Signature \_\_\_\_\_

Date \_\_\_\_\_

Typed or printed name \_\_\_\_\_

Registration No. \_\_\_\_\_

This collection of information is required by 37 CFR 1.311. The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.14. This collection is estimated to take 12 minutes to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, Virginia 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Commissioner for Patents, P.O. Box 1450, Alexandria, Virginia 22313-1450.

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EXAMINER

STRIEB, MICHAEL A

ART UNIT

PAPER NUMBER

2862

DATE MAILED: 12/22/2008

## Determination of Patent Term Adjustment under 35 U.S.C. 154 (b) (application filed on or after May 29, 2000)

The Patent Term Adjustment to date is 161 day(s). If the issue fee is paid on the date that is three months after the mailing date of this notice and the patent issues on the Tuesday before the date that is 28 weeks (six and a half months) after the mailing date of this notice, the Patent Term Adjustment will be 161 day(s).

If a Continued Prosecution Application (CPA) was filed in the above-identified application, the filing date that determines Patent Term Adjustment is the filing date of the most recent CPA.

Applicant will be able to obtain more detailed information by accessing the Patent Application Information Retrieval (PAIR) WEB site (<http://pair.uspto.gov>).

Any questions regarding the Patent Term Extension or Adjustment determination should be directed to the Office of Patent Legal Administration at (571)-272-7702. Questions relating to issue and publication fee payments should be directed to the Customer Service Center of the Office of Patent Publication at 1-(888)-786-0101 or (571)-272-4200.

|                               |                        |                     |  |
|-------------------------------|------------------------|---------------------|--|
| <b>Notice of Allowability</b> | <b>Application No.</b> | <b>Applicant(s)</b> |  |
|                               | 10/550,489             | FUKUI ET AL.        |  |
|                               | <b>Examiner</b>        | <b>Art Unit</b>     |  |
|                               | MICHAEL A. STRIEB      | 2862                |  |

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address--**

All claims being allowable, PROSECUTION ON THE MERITS IS (OR REMAINS) CLOSED in this application. If not included herewith (or previously mailed), a Notice of Allowance (PTOL-85) or other appropriate communication will be mailed in due course. **THIS NOTICE OF ALLOWABILITY IS NOT A GRANT OF PATENT RIGHTS.** This application is subject to withdrawal from issue at the initiative of the Office or upon petition by the applicant. See 37 CFR 1.313 and MPEP 1308.

1. ☒ This communication is responsive to Applicant's Amendment filed October 8, 2008.
2. ☒ The allowed claim(s) is/are 3-6 and 8-19.
3. ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
  - a) ☒ All    b) ☐ Some\*    c) ☐ None    of the:
    1. ☐ Certified copies of the priority documents have been received.
    2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
    3. ☒ Copies of the certified copies of the priority documents have been received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

\* Certified copies not received: \_\_\_\_\_.

Applicant has THREE MONTHS FROM THE "MAILING DATE" of this communication to file a reply complying with the requirements noted below. Failure to timely comply will result in ABANDONMENT of this application.

**THIS THREE-MONTH PERIOD IS NOT EXTENDABLE.**

4. ☐ A SUBSTITUTE OATH OR DECLARATION must be submitted. Note the attached EXAMINER'S AMENDMENT or NOTICE OF INFORMAL PATENT APPLICATION (PTO-152) which gives reason(s) why the oath or declaration is deficient.
5. ☐ CORRECTED DRAWINGS ( as "replacement sheets") must be submitted.
  - (a) ☐ including changes required by the Notice of Draftsperson's Patent Drawing Review ( PTO-948) attached
    - 1) ☐ hereto or 2) ☐ to Paper No./Mail Date \_\_\_\_\_.
  - (b) ☐ including changes required by the attached Examiner's Amendment / Comment or in the Office action of Paper No./Mail Date \_\_\_\_\_.

**Identifying indicia such as the application number (see 37 CFR 1.84(c)) should be written on the drawings in the front (not the back) of each sheet. Replacement sheet(s) should be labeled as such in the header according to 37 CFR 1.121(d).**
6. ☐ DEPOSIT OF and/or INFORMATION about the deposit of BIOLOGICAL MATERIAL must be submitted. Note the attached Examiner's comment regarding REQUIREMENT FOR THE DEPOSIT OF BIOLOGICAL MATERIAL.

**Attachment(s)**

- |   |  |
|---|--|
| <ol style="list-style-type: none"> <li>1. <input type="checkbox"/> Notice of References Cited (PTO-892)</li> <li>2. <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)</li> <li>3. <input type="checkbox"/> Information Disclosure Statements (PTO/SB/08),<br/>Paper No./Mail Date _____</li> <li>4. <input type="checkbox"/> Examiner's Comment Regarding Requirement for Deposit<br/>of Biological Material</li> </ol> | <ol style="list-style-type: none"> <li>5. <input type="checkbox"/> Notice of Informal Patent Application</li> <li>6. <input type="checkbox"/> Interview Summary (PTO-413),<br/>Paper No./Mail Date _____.</li> <li>7. <input type="checkbox"/> Examiner's Amendment/Comment</li> <li>8. <input checked="" type="checkbox"/> Examiner's Statement of Reasons for Allowance</li> <li>9. <input type="checkbox"/> Other _____.</li> </ol> |
|---|--|

/MICHAEL A. STRIEB/  
Examiner, Art Unit 2862

## DETAILED ACTION

### *Response to Amendment*

1. Applicant's amendment filed on October 8, 2008 has been entered. Claims 3-6, and 8-19 are still pending in this application, with claims 3,5,6,8,9,12, and 14-19 being independent. Claims 1-2 and 7 have been cancelled.

In light of Applicant's amendment filed on October 8, 2008, the objection to claim 6 in the Office Action of May 8, 2008 is withdrawn.

### *Allowable Subject Matter*

2. Claims 3-6 and 8-19 are allowed.

Regarding **claims 3-4**, Tatsuhiko et al (JP 2001-230970) disclose an image taking device for taking an image of an object by focusing reflected light from the object on a light receiving portion, comprising a measuring portion that measures a distance between the object and the image taking device; and an exposure control portion that controls exposure time of the light receiving portion upon taking an image in accordance with the measurement result of the measuring portion (paragraphs 8, 44, and 51). Sato (US 5,204,709) disclose an image taking portion that takes the image if it is determined that the distance between the object and the image taking device is within a predetermined range (column 5, lines 54-68; column 6, lines 1-11; Figure 4). Musgrave et al (US 6,377, 699) disclose a posture determining portion that provides guidance as to the optimal position of the subject in relation to the image taking device (column 7, lines 12-35).

However, the prior art does not disclose wherein the measuring portion measures distances between the image taking device and at least two points in a subject surface of the object; the posture determining device determining whether or not the subject surface of the object is perpendicular to the axis along the shooting direction of the image taking device in accordance with the distances measured. Further, the prior art does not disclose wherein the image taking portion takes the image if it is determined by the posture determining portion that the subject surface is perpendicular to the axis.

Regarding **claim 5**, Tatsuhiko et al (JP 2001-230970) disclose an image taking device for taking an image of an object by focusing reflected light from the object on a light receiving portion, comprising a measuring portion that measures a distance between the object and the image taking device; and an exposure control portion that controls exposure time of the light receiving portion upon taking an image in accordance with the measurement result of the measuring portion (paragraphs 8, 44, and 51). Sato (US 5,204,709) disclose an image taking portion that takes the image if it is determined that the distance between the object and the image taking device is within a predetermined range (column 5, lines 54-68; column 6, lines 1-11; Figure 4). Musgrave et al (US 6,377, 699) disclose a posture determining portion that provides guidance as to the optimal position of the subject in relation to the image taking device (column 7, lines 12-35).

However, the prior art does not disclose a still determining portion that determines whether the object is still in accordance with the first distance measured and

Art Unit: 2862

the second distance measured. Further, the prior art does not disclose wherein the image taking portion takes the image if it is determined by the still determining portion that the object is still.

Regarding **claim 6**, Tatsuhiko et al (JP 2001-230970) disclose an image taking device for taking an image of an object by focusing reflected light from the object on a light receiving portion, comprising a measuring portion that measures a distance between the object and the image taking device; and an exposure control portion that controls exposure time of the light receiving portion upon taking an image in accordance with the measurement result of the measuring portion (paragraphs 8, 44, and 51). Sato (US 5,204,709) disclose an image taking portion that takes the image if it is determined that the distance between the object and the image taking device is within a predetermined range (column 5, lines 54-68; column 6, lines 1-11; Figure 4). Musgrave et al (US 6,377, 699) disclose a posture determining portion that provides guidance as to the optimal position of the subject in relation to the image taking device (column 7, lines 12-35).

However, the prior art does not disclose a background storage portion that stores a background image that is taken when the object is not detected and an extracting portion that extract a part of the object from the image by comparing the background image with the image.

Regarding **claims 8 and 9**, a similar analysis may be made as for claim 3 above.

Regarding **claim 12**, Okino (US 4,768,876) discloses an image taking device for taking an image of an object by focusing reflected light from the object on a light

Art Unit: 2862

receiving portion (column 1, lines 57-58) that converts the light into an electric signal (column 2, lines 60-62; column 3, lines 8-10) comprising a measuring portion that measures a distance between the object and the image taking device (column 6, lines 23-26; 36-49) and a gain control portion that controls an output gain of the electric signal in accordance with the distance measured (column 2, lines 64-65; column 3, lines 36-40; column 6, lines 57-60; Figure 1, element 9). Sato discloses an image taking portion that takes the image if it is determined that the distance between the object and the image taking device is within a predetermined range (column 5, lines 54-68; column 6, lines 1-11; Figure 4).

However, the prior art does not disclose wherein the measuring portion measures distances between the image taking device and at least two points in a subject surface of the object; the posture determining device determining whether or not the subject surface of the object is perpendicular to the axis along the shooting direction of the image taking device in accordance with the distances measured. Further, the prior art does not disclose wherein the image taking portion takes the image if it is determined by the posture determining portion that the subject surface is perpendicular to the axis.

Regarding **claim 14**, Okino discloses an image taking device for taking an image of an object by focusing reflected light from the object on a light receiving portion (column 1, lines 57-58) comprising a measuring portion that measures a distance between the object and the image taking device (column 6, lines 23-26; 36-49) and a gain control portion that controls an output gain of the electric signal in accordance with



Art Unit: 2862

the distance measured (column 2, lines 64-65; column 3, lines 36-40; column 6, lines 57-60; Figure 1, element 9).

However, the prior art does not disclose a still determining portion that determines whether the object is still in accordance with the first distance measured and the second distance measured. Further, the prior art does not disclose wherein the image taking portion takes the image if it is determined by the still determining portion that the object is still.

Regarding **claim 15**, Okino discloses an image taking device for taking an image of an object by focusing reflected light from the object on a light receiving portion (column 1, lines 57-58) comprising a measuring portion that measures a distance between the object and the image taking device (column 6, lines 23-26; 36-49) and a gain control portion that controls an output gain of the electric signal in accordance with the distance measured (column 2, lines 64-65; column 3, lines 36-40; column 6, lines 57-60; Figure 1, element 9).

However, the prior art does not disclose a background storage portion that stores a background image that is taken when the object is not detected and an extracting portion that extract a part of the object from the image by comparing the background image with the image.

Regarding **claims 16 and 18**, a similar analysis may be made as for claim 5 above.

Regarding **claims 17 and 19**, a similar analysis may be made as for claim 6 above.

***Response to Arguments***

3. Applicant's arguments, see Remarks, filed October 8, 2008, with respect to claims 1-8 and 9 have been fully considered and are persuasive. The rejection of claims 1-8 and 9 has been withdrawn.

***Conclusion***

4. Any response to this office action should be faxed to (571) 273-8300 or mailed to:

Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

Hand - delivered responses should be brought to:

Customer Service Window  
Randolph Building  
401 Dulany Street

5. Any inquiry concerning this communication or earlier communications from the examiner should be directed to MICHAEL A. STRIEB whose telephone number is (571)270-3528. The examiner can normally be reached on Monday-Friday 8am-5pm EST.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Patrick Assouad can be reached on (571) 272-2210. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Art Unit: 2862

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/William B. Perkey/  
for Patrick Assouad, SPE of Art Unit 2862

MAS